Crl.A. 172/2003
BEFORE
HON'BLE MR.JUSTICE P.G.AGARWAL
HON'BLE MR. JUSTICE K. MERUNO

AGARWAL,J:

None appears for the appellant when the matter was called for hearing. We have heard learned Public Prosecutor, Assam.

2. Deceased Dipali Das was given in marriage to the accused appellant Tapan Das and the couple used to reside together. On 10.01.1999 Dipali came to her parent's place. While she was staying there, it is alleged that on 13.01.1999 around 9 P.M. the accused appellant came to his in-laws house, talked to his wife and thereafter forced her to drink something and fled the scene. Dipali fell sick and vomited for which on the next day she was taken to Kathlichara Public Health Centre and therefrom she was shifted to Hailakandi Civil Hospital where she died on 17.01.1999. The FIR (Ext.1) was lodged by the mother of the deceased to the above effect.

3. The dead body was sent for postmortem examination, which was conducted by the PW-5 Dr. Dulal Mukharjee. There was no sign of external injury on the person of the deceased and the Doctor could not ascertain the cause of death. The viscera like stomach with content, liver, spleen and kidney were preserved and subsequently sent to Forensic Science Laboratory for Chemical analysis. The analysis was done by the Senior Scientific Officer, Toxicology Division, Forensic Science Laboratory, Assam and Ext-8 is the report, which shows one Plastic jar containing Stomach with contents, Kidney, Spleen and Liver of the deceased gave positive tests for carbonate insecticide. The Forensic Science Laboratory's report has not been challenged and the trial Court therefore rightly held that the deceased died with the consumption of carbonate insecticide.

4. PW-1 is the mother of the deceased who deposed that her daughter Dipali had eloped with the accused and thereafter the villagers arranged their marriage. After three months of the marriage Dipali came to her mother's place. On the date of occurrence when PW-1 and her another daughter Rita were busy in the kitchen, the accused came to their house and thereafter the deceased went out with him towards a bamboo grove and after some time the deceased came running and allegedly reported that the accused forcibly poured poison into her mouth. Dipali started vomiting. PW-1 called neighbours and she was taken to Kathlicharra in the next morning and as her condition deteriorated she was removed to Hailakandi Civil Hospital where she died.

5. The evidence of PW-4 is to the same effect except according to her, her mother had called Dipali and thereafter Dipali came running and told that the accused had poured something from a bottle on her mouth and that she is having stomach pain and thereafter started vomiting.

6. PW-2, who is the second husband of PW-1, deposed that Dipali told him that her husband had administered poison. PW-3 is a neighbour of PW-1. She has deposed that on the date of occurrence the PW-1 came to her house and enquired whether Dipali had come there. When she replied in negative PW-1 shouted for Dipali and after some time Dipali returned and told that she was having stomach ache. She further stated that later on the deceased told her that the accused had opened her mouth and poured poison. They looked for Doctor, but was not available and on the next day morning the deceased was taken to hospital.

7. In the present case we find that none of the prosecution witnesses namely PW-1, PW-2, PW-3 and PW-4 had seen the accused administering anything to the deceased, although they stated that the deceased had reported to them about administering of poison. These four witnesses, however, given a different version of the statement of the deceased on that count. The above statement of the deceased has been turned by denying the declaration. This is a case of oral dying declaration and there is no bar in more than one dying declaration in a case. But, it is expected that the exact words or language used by the deceased should

be true. Here, we find that the four witnesses have given different version. In the present case we find that the deceased had eloped with the accused and a case of love marriage and the accused had married the deceased against the wish of PW-1, PW-2 and PW-4. There is nothing to show that the marital relationship of the accused and the deceased was unhappy or there was any discontent to note. Deposition of PW-1 is very specific that her daughter had come to her place after taking necessary permission from the mother of the accused and she stayed there for two days only. The prosecution was absolutely in dark as to whether the accused administered poison to the deceased or not. Moreover, as stated by PW-1 that the deceased had come for two days and thereafter she was to return to her in-laws place, under the circumstances, where is the need for the husband to come to her in-laws house for administering poison in presence of all sundries so that evidence can be gathered against him. We have also doubt as to whether the accused had at all come to the house of PW-1. The evidence of PW-3 on that score is very relevant as because she has stated that around 9 P.M. PW-1 came to her house to enquire whether her daughter Dipali is with them. If Dipali was talking with her husband in the court yard, PW-1 had no reason to come to her and enquire and make search for the decease in the house of PW-3.

8. There is another aspect of the matter also. All the witnesses had stated that immediately after administering the poison the deceased told them that the poison was administered by the accused. The incident took place on 13.01.1999 and the victim was taken to Kathlicharra on the next morning i.e. 14.01.1999 and then to Hailakandi Civil Hospital where she died on 17.01.1999. However, for the five days neither the PW-1 nor PW-2 lodged any FIR in the police Station or never informed any one that the accused appellant has poisoned their daughter. Admittedly, they had no much love or respect for the accused, who had eloped their daughter and the marriage between the couple was performed by the villagers and not by the PW-1 and PW-2 who is the stepfather. Further, no attempt was made to get the dying declaration of the deceased recorded in writings. We find that the delay in lodging the FIR was intentional to suppress the truth and once Dipali died, the PW-1 and PW-2 had seen the day and lodged the FIR on the next day alleging fouls play implicating the accused appellant. The deceased was staying with PW-1 and PW-2 and was admittedly died in the suspicious circumstances. Though the suspicion to be pointed towards them, in order to avoid the same, the FIR was lodged naming the accused.

9. In the facts and circumstances stated above, we are of the view that the delay in lodging the FIR is fatal to the prosecution and we are unable to accept or place reliance on the prosecution version of the incident. No prudent person could have come to the house of in-laws to administer poison even if he intend or plan to do so. PW-2 and PW-3 did not see the accused in the house of PW-1 and in view of the statement of PW-3 that PW-1 came to her house cast doubt on the veracity of the statement of PW-1. From the facts of the present case, we are unable to place any reliance on the so-called dying declaration that the deceased was administered poison by the accused appellant. If the dying declaration is discarded, there is absolutely no other material or evidence.

10. In view of the aforesaid discussions, we hold that the prosecution has failed to bring home the charges. The appeal is accordingly allowed and the impugned order of conviction and sentence is set aside. Accused appellant Tapan Das is acquitted of the charge and he be set at liberty and shall be released from jail forthwith, if not wanted in connection with any other case.

Send down the records.